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**Federal Communications Commission**

**FCC 98-50**

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Before the  
**Federal Communications Commission**  
Washington D.C. 20554

In the Matter of	)	CC Docket No. 98-14
	)	
Number Portability Query Services	)	
	)	
Ameritech Tariff F.C.C. No. 2,	)	CCB/CPD 97-46
Transmittal Nos. 1123, 1130;	)	
	)	
Bell Atlantic Tariff F.C.C. No. 1,	)	CCB/CPD 97-52
Transmittal No. 1009;	)	
	)	
Southwestern Bell Tariff F.C.C. No. 73,	)	CCB/CPD 97-64
Transmittal No. 2680;	)	
	)	
Pacific Bell Tariff F.C.C. No. 128,	)	CCB/CPD 97-65
Transmittal No. 1962	)	

**Tariff Investigation and Termination Order**

Adopted: March 30, 1998

Released: March 30, 1998

By the Commission:

**I. Introduction**

1. In this order, we terminate as moot the investigation of the initial long-term number portability query service tariff revisions Pacific Bell and Southwestern Bell filed because those carriers have filed superseding tariff revisions for such services, and because no customers have received service under the initial tariff revisions that were set for investigation. Similarly, we terminate as moot the investigation of the initial tariff revisions Bell Atlantic filed because Bell Atlantic has also filed superseding tariff revisions, and has stated that it will refund any charges under the initial tariff revisions set for investigation. We find unlawful the tariff revisions contained in Ameritech Transmittal Nos. 1123 and 1130 because Ameritech failed to make a sufficient cost showing to justify the proposed rates. Ameritech has had no customers under this tariff. Consequently, we direct Ameritech to remove within five business days of the release of this order all the tariff revisions described in Ameritech Transmittal Nos. 1123 and 1130.

**II. Background**

2. The inability of customers to retain their telephone numbers when changing local

service providers hampers the development of local competition.<sup>1</sup> Section 251(b)(2) of the Communications Act of 1934, as amended, seeks to remove this impediment to competition by requiring all local exchange carriers (LECs), both incumbents and new entrants, "to provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission."<sup>2</sup> To prevent the cost of providing number portability from itself becoming a barrier to local competition, section 251(e)(2) requires that "[t]he cost of establishing ... number portability shall be borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission."<sup>3</sup>

3. In a combined *First Report and Order (Order) & Further Notice of Proposed Rulemaking (Further Notice)*, the Commission promulgated performance criteria that long-term number portability solutions must meet,<sup>4</sup> required local exchange carriers to implement long-term number portability through a system of regional databases managed by neutral third party administrators,<sup>5</sup> and established a schedule for the phased deployment of long-term number portability.<sup>6</sup> In light of questions regarding the design and deployment of a long-term number portability system, the *Order* could not, and did not, resolve how carriers should bear the costs of providing long-term number portability. The Commission instead issued a *Further Notice* to implement section 251(e)(2) with respect to the costs associated with building and operating the long-term number portability system.<sup>7</sup> The Commission has not yet issued a decision resolving the issues it raised in the *Further Notice*.

4. Carriers intend to provide number portability through a location routing number (LRN) architecture.<sup>8</sup> Under an LRN architecture, each customer's telephone number is matched in one of seven databases<sup>9</sup> with an LRN that identifies the switch that currently serves that telephone number.<sup>10</sup>

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<sup>1</sup> See *In re Telephone Number Portability*, First Report and Order & Further Notice of Proposed Rulemaking, 11 FCC Rcd. 8352, 8367-68 (1996) (Order & Further Notice) (citing evidence that business and residential customers are reluctant to switch carriers if they must change numbers).

<sup>2</sup> 47 U.S.C. § 251(b)(2).

<sup>3</sup> 47 U.S.C. § 251(e)(2).

<sup>4</sup> See *Order & Further Notice*, 11 FCC Rcd. at 8355, 8371-85.

<sup>5</sup> *Id.* at 8355, 8399-8404.

<sup>6</sup> *Id.* at 8355, 8393-96, 8501-02, *modified*, First Memorandum Opinion and Order on Reconsideration, 12 FCC Rcd. 7236, 7283, 7346-47 (1997).

<sup>7</sup> See *Order & Further Notice*, 11 FCC Rcd. at 8459-66.

<sup>8</sup> See *In re Telephone Number Portability*, Second Report and Order, 12 FCC Rcd. 12281, 12287 (1997) (Second Report and Order).

<sup>9</sup> The databases roughly match the original Regional Bell Operating Company (RBOC) service territories.

Neutral third parties, called local number portability administrators, will administer these regional databases.<sup>11</sup> When a customer changes from one LEC to another, the carrier that wins the customer will "port" the customer's number from the former carrier by electronically transmitting (uploading) the new LRN to the administrator of the relevant regional database.<sup>12</sup> This will pair the customer's original telephone number with the LRN for the switch of the new carrier, allowing the customer to retain the original telephone number. The regional database administrators will electronically transmit (download) LRN updates to carriers responsible for routing telephone calls.<sup>13</sup> When a carrier routes an interswitch telephone call to a location where number portability is available, the carrier will "query" this downloaded data to determine the LRN for the switch that serves the terminating telephone number of the call.<sup>14</sup>

5. In the *Second Report and Order*, the Commission approved the industry's "N minus one" (N-1) querying protocol.<sup>15</sup> Under this protocol, the N-1 carrier will be responsible for the query, "where 'N' is the entity terminating the call to the end user, or a network provider contracted by the entity to provide tandem access."<sup>16</sup> Thus, the N-1 carrier for a local call will usually be the calling customer's LEC; the N-1 carrier for an interexchange call will usually be the calling customer's interexchange carrier.<sup>17</sup> Rather than perform its own querying, an N-1 carrier may arrange for other

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<sup>10</sup> See generally NORTH AMERICAN NUMBERING COUNCIL, LOCAL NUMBER PORTABILITY ADMINISTRATION SELECTION WORKING GROUP REPORT [hereinafter NANC RECOMMENDATION] App. D (Architecture & Administrative Plan for Local Number Portability) at 6, ¶ 7.2 (April 25, 1997), *adopted, Second Report and Order*, 12 FCC Rcd. at 12283-84; *Order & Further Notice*, 11 FCC Rcd. at 8359-60, 8399-8400, 8494-95; AIN PROGRAM, NATIONAL COMMUNICATIONS SYSTEM, LOCAL NUMBER PORTABILITY: AIN AND NS/EP IMPLICATIONS, § 6.1 (July 1996) [hereinafter LOCAL NUMBER PORTABILITY REPORT].

<sup>11</sup> See *Order & Further Notice*, 11 FCC Rcd. at 8400-01.

<sup>12</sup> See generally NANC RECOMMENDATION, *supra* note 10, App. E (LNPA Technical & Operational Requirements Task Force Report) app. a (Issues & Resolutions), p. 1, and app. b (Inter-Service Provider LNP Operations Flows), fig. 1 (Provisioning) & p. 2.

<sup>13</sup> *Id.*

<sup>14</sup> See *Order & Further Notice*, 11 FCC Rcd. at 8359-60, 8494-95; LOCAL NUMBER PORTABILITY REPORT, *supra* note 10, at §§ 2.3, 5. Calls originating and terminating on the same switch need not be queried. See NANC RECOMMENDATION, *supra* note 10, App. D (Architecture & Administrative Plan for Local Number Portability) at 10, ¶ 8 & fig. 2, scenarios 1 & 2.

<sup>15</sup> *Second Report and Order*, 12 FCC Rcd. at 12323.

<sup>16</sup> NANC RECOMMENDATION, *supra* note 10, app. D (Architecture & Administrative Plan for Local Number Portability) at 8, ¶ 7.8.

<sup>17</sup> *Id.* at attachment A (Example N-1 Call Scenarios); LOCAL NUMBER PORTABILITY REPORT, *supra* note 10, at § 9.1.3. & fig. 9-3 (N-1 Network Query).

carriers or third parties to provide querying services for them.<sup>18</sup> The Commission determined in the *Second Report and Order* that an incumbent LEC may charge an N-1 carrier for performing queries on the N-1 carrier's behalf pursuant to such an arrangement.<sup>19</sup>

6. The Commission also noted that when an N-1 carrier fails to ensure that a call is queried, the call might be routed by default to the LEC that originally served the telephone number, usually an incumbent LEC.<sup>20</sup> If the customer has switched carriers, the LEC that originally served the customer incurs costs in querying and redirecting the call. This could happen, for example, if there is a technical failure in the N-1 carrier's ability to query, or if the N-1 carrier fails to ensure that its calls are queried, either through its own query capability or through an arrangement with a third party. The Commission determined that if an incumbent LEC performs queries on default-routed calls, the incumbent LEC may charge the N-1 carrier for performing this function.<sup>21</sup> The Commission determined further that it would "allow LECs to block default-routed calls, but only in specific circumstances when failure to do so is likely to impair network reliability."<sup>22</sup> The Commission also said that it would "require LECs to apply this blocking standard to calls from all carriers on a nondiscriminatory basis."<sup>23</sup>

7. The Competitive Pricing Division (Division) of the Common Carrier Bureau (Bureau) issued two orders October 30, 1997, and December 30, 1997, granting petitions by Ameritech, Bell Atlantic, Southwestern Bell, and Pacific Bell to establish new service rate elements to provide long-term number portability query services.<sup>24</sup> These rate elements described services under which Ameritech, Bell Atlantic, Southwestern Bell, and Pacific Bell would query traffic routed to them by other carriers on a prearranged basis or by default. The Division required all four carriers to conform

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<sup>18</sup> See *Order & Further Notice*, 11 FCC Rcd. at 8404.

<sup>19</sup> See *Second Report and Order*, 12 FCC Rcd. at 12324.

<sup>20</sup> *Id.* at 12324-25.

<sup>21</sup> *Id.* at 12325-26.

<sup>22</sup> *Id.* at 12324-25.

<sup>23</sup> *Id.* at 12325-26.

<sup>24</sup> See *In re Petition of Ameritech to Establish a New Access Tariff Service and Rate Elements Pursuant to Part 69 of the Commission's Rules*, Memorandum Opinion and Order, 12 FCC Rcd. 17605, 17605, 17611-12 (Comp. Pricing Div. Comm. Car. Bur. 1997) (Ameritech and Bell Atlantic Order); *In re Petition of Southwestern Bell Telephone Company Under Section 69.4(g)(1)(ii) of the Commission's Rules for Establishment of New Service Rate Elements*, Memorandum Opinion and Order, 13 FCC Rcd. 177, 177, 183 (Comp. Pricing Div. Comm. Car. Bur. 1997) (Southwestern Bell and Pacific Bell Order). The Division also suspended for one day and incorporated into the investigation Ameritech revisions to its long-term number portability query service purporting to clarify in certain circumstances Ameritech's right to block unqueried traffic that carriers deliver to Ameritech's network. See *In re Ameritech Revisions to Tariff F.C.C. No. 2*, CCB/CPD 97-46, Memorandum Opinion and Order, DA 97-2353 (rel. Nov. 7, 1997).

their rates, rate structures, regulations, and services offered under these rate elements to any determinations made by the Commission in CC Docket No. 95-116.<sup>25</sup> The Division further concluded that the transmittals the carriers filed implementing the rate elements raised substantial questions of lawfulness.<sup>26</sup> Consequently, the Division suspended the transmittals for one day and set them for investigation.<sup>27</sup> The Division also imposed an accounting order for the duration of the investigation.<sup>28</sup> The Division issued an order January 30, 1998, designating issues for investigation, and stated that the carriers "should identify costs with sufficient specificity to allow the Commission and other parties to evaluate them."<sup>29</sup>

### III. Discussion

#### A. Pacific Bell and Southwestern Bell Tariff Revisions

8. Pacific Bell and Southwestern Bell have concluded that the cost and demand estimates upon which they relied in the tariff revisions subject to this investigation are no longer accurate.<sup>30</sup> Based on their further experience in implementing long-term number portability, these carriers have filed superseding tariff revisions and supporting documentation.<sup>31</sup> Consequently, they ask us to terminate the investigation of their previously filed tariff revisions.<sup>32</sup> Illuminet and WorldCom, however, urge the Commission to deny requests by Pacific Bell and Southwestern Bell to terminate the investigation of their initial tariff revisions, arguing that Pacific Bell and Southwestern Bell have not demonstrated that any revised information will render moot the issues subject to this investigation.<sup>33</sup>

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<sup>25</sup> *Ameritech and Bell Atlantic Order*, 12 FCC Rcd. at 17612; *Southwestern Bell and Pacific Bell Order*, 13 FCC Rcd. at 181-82.

<sup>26</sup> *Ameritech and Bell Atlantic Order*, 12 FCC Rcd. at 17613; *Southwestern Bell and Pacific Bell Order*, 13 FCC Rcd. at 182.

<sup>27</sup> *Ameritech and Bell Atlantic Order*, 12 FCC Rcd. at 17613; *Southwestern Bell and Pacific Bell Order*, 13 FCC Rcd. at 182.

<sup>28</sup> *Ameritech and Bell Atlantic Order*, 12 FCC Rcd. at 17613; *Southwestern Bell and Pacific Bell Order*, 13 FCC Rcd. at 182.

<sup>29</sup> *In re Number Portability Query Services*, CC Docket No. 98-14, Order Designating Issues for Investigation, DA 98-182, at ¶ 15 (rel. Jan. 30, 1998).

<sup>30</sup> Pacific Bell Response at 2; Southwestern Bell Response at 1-2.

<sup>31</sup> See *Pacific Bell Tariff F.C.C. No. 128*, Transmittal No. 1973 (filed Mar. 13, 1998); *Southwestern Bell Tariff F.C.C. No. 73*, Transmittal No. 2694 (filed Mar. 4, 1998).

<sup>32</sup> Pacific Bell Response at 2-3; Southwestern Bell Response at 2-3.

<sup>33</sup> Illuminet Comments at 2-4; WorldCom Comments at 7-8.

9. We find that further investigation of the initial tariff revisions would serve no useful purpose. Neither Pacific Bell nor Southwestern Bell had customers under the initial tariff revisions.<sup>34</sup> Terminating the investigation will not prejudice interested parties. The Bureau can afford interested parties an opportunity to review the new filings, as well as any changed rates or new issues they contain, should the Bureau determine to investigate the new revisions. Accordingly, we will terminate as moot the investigation of the initial tariff revisions described in Pacific Bell Transmittal No. 1962 and Southwestern Bell Transmittal No. 2680.<sup>35</sup>

B. Bell Atlantic Tariff Revisions

10. Bell Atlantic says that it "developed its original cost information before it had begun to provide number portability."<sup>36</sup> Bell Atlantic has filed a superseding query service tariff with revised cost support "to better reflect the actual costs of providing this service."<sup>37</sup> Unlike Pacific Bell and Southwestern Bell, Bell Atlantic provided some query services under its initial tariff revisions.<sup>38</sup> Bell Atlantic has stated that it will refund any charges under the initial tariff revisions that were set for investigation.<sup>39</sup> We forbear from enforcing section 203(c) of the Communications Act of 1934 to the extent necessary to allow such refunds.<sup>40</sup> Section 203(c) prohibits carriers from issuing refunds except in accordance with tariffed refund schedules.<sup>41</sup> Section 10 of the Communications Act of 1934, as amended, allows the Commission to forbear from applying a provision of the Communications Act to a carrier practice in a given instance if the Commission finds that (1) enforcement of that provision is not necessary to ensure that the practice is just and reasonable and not unjustly or unreasonably

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<sup>34</sup> See Pacific Bell Response at 2; Southwestern Bell Response at 2.

<sup>35</sup> See *In re Local Exchange Carriers' Payphone Functions and Features*, Memorandum Opinion and Order, 12 FCC Rcd. 17996, 17996, 18001, 18006-07 (finding it unnecessary to consider the lawfulness of Bell Atlantic rates or to consider the need for refunds because Bell Atlantic revised the rates and did not have customers under the initial filing).

<sup>36</sup> *Ex parte* letter from Joseph J. Mulieri, Director of Government Relations, Bell Atlantic, to Jane Jackson, Chief of the Competitive Pricing Division, Common Carrier Bureau, Federal Communications Commission (March 10, 1998) (on file with Magalie Roman Salas, Secretary, Federal Communications Commission) (Letter of March 10 from Joseph Mulieri).

<sup>37</sup> See *id.* See also *Bell Atlantic Tariff F.C.C. No. 1*, Transmittal No. 1036 (filed Mar. 23, 1998).

<sup>38</sup> Letter of March 10 from Joseph Mulieri.

<sup>39</sup> *Ex parte* letter from Joseph J. Mulieri, Director of Government Relations, Bell Atlantic, to Jane Jackson, Chief of the Competitive Pricing Division, Common Carrier Bureau, Federal Communications Commission (March 23, 1998) (on file with Magalie Roman Salas, Secretary, Federal Communications Commission).

<sup>40</sup> Cf. *In re Petition for Forbearance from Application of the Communications Act of 1934, as Amended, to Previously Authorized Services*, Memorandum Opinion and Order, 12 FCC Rcd. 8408 (Comm. Car. Bur. 1997) (applying forbearance analysis to allow a refund).

<sup>41</sup> See 47 U.S.C. § 203(c).

discriminatory; (2) enforcement of that provision is not necessary to protect consumers; and (3) forbearance from applying that provision is consistent with the public interest.<sup>42</sup>

11. We find that enforcing section 203(c) in this instance is not necessary to protect consumers because sections 201-205 of the Act still require that Bell Atlantic issue the refunds in a reasonable and nondiscriminatory manner, and because the refunds will benefit Bell Atlantic's query-service customers. We also find that enforcing section 203(c) in this instance would not be necessary to protect consumers because Bell Atlantic is proposing to refund charges, which, as stated, will benefit Bell Atlantic's customers. Similarly, we find that forbearing from section 203(c) to the extent necessary to allow the refunds in this instance is consistent with the public interest because it will allow consumers to receive refunds. Consequently, we also terminate as moot the investigation of the initial tariff revisions described in Bell Atlantic Transmittal No. 1009.

12. We note that a number of commenters raised concerns that Bell Atlantic's tariff revisions indicate that it plans to query all calls, as opposed to only those made to customers in areas where number portability is available.<sup>43</sup> Such a practice affects a carrier's demand forecasts, and thus its rates for query services. If we initiate a proceeding to determine the lawfulness of Bell Atlantic's new tariff revisions, and this issue is raised, we can consider it in the context of that proceeding.

#### C. Ameritech Tariff Revisions

13. Ameritech has not provided sufficient cost support.<sup>44</sup> Ameritech asserts that its proposed rates for query services are justified based on the costs of providing those services. To justify rates based on costs, carriers generally must submit, among other information, actual cost figures and the methodologies the carriers used to derive rates based on those costs. In this instance, Ameritech has described the methodology by which it estimated its costs. Ameritech did not, however, show its investment levels, its allocation of investment among its various query services, or how it attributed additional costs (for example, additional transport) to various services.<sup>45</sup> We are therefore unable to determine how Ameritech developed its per-query investment or per-query costs. Accordingly, we cannot determine from Ameritech's cost showings whether its rates are reasonable based on costs. Consequently, we find Ameritech's tariff revisions unlawful.<sup>46</sup> We direct Ameritech

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<sup>42</sup> 47 U.S.C. § 160.

<sup>43</sup> See AT&T Comments at 7-9; Comcast Comments at 3-8; Sprint Spectrum Comments at 4-6; Time Warner Comments at 1-8.

<sup>44</sup> Cf. AT&T Opposition at 2-4; Illuminet Comments at 3, 6; MCI Comments at 2; Sprint Spectrum Comments at 1-2; WorldCom Comments at 4, 6, 8-9.

<sup>45</sup> See *Ameritech Tariff F.C.C. No. 2*, Transmittal No. 1123, *Description and Justification* at 4-7 & Exs. 1, 3-4; Ameritech Direct Case at 5-15.

<sup>46</sup> See *In re 800 Database Access Tariffs*, Report and Order, 11 FCC Rcd. 15227, 15269-70 & n.162, 15276-77 (1996) (finding inadequate the cost support Ameritech and Bell Atlantic filed in the 800 number portability tariff investigation because they did not provide the data upon which they based their aggregated unit

to remove within five business days of release of this order all the tariff revisions described in Ameritech Transmittal Nos. 1123 and 1130. Ameritech has not provided query services to any customers under the tariff revisions subject to this investigation.<sup>47</sup> Thus, we do not need to require refunds for Ameritech's query service.

14. We take this opportunity to remind carriers that the burden to justify their proposed rates subject to investigation rests with them.<sup>48</sup> The Communications Act of 1934, as amended, authorizes the Commission to "require the interested carrier or carriers to refund, with interest, to the persons in whose behalf such amounts were paid, such portion of such charge for a new service or revised charges as by its decision shall be found not justified."<sup>49</sup> The current investigation presents instances in which carriers filed tariff revisions without adequate cost support, and failed to provide adequate cost justification in their direct cases despite the Competitive Pricing Division's request in the designation order that the carriers "identify costs with sufficient specificity to allow the Commission and other parties to evaluate them."<sup>50</sup> We remind carriers that the Communications Act authorizes the Commission to require carriers to refund all charges to the extent they were not justified. The cost data these carriers filed in support of their transmittals were inadequate. Rather than provide the Commission and interested parties with sufficient data to evaluate the components and reasonableness of their charges, the carriers provided conclusory rates and brief narratives describing their methodologies. They did not provide sufficient information demonstrating the calculations they made to derive those rates.

D. Other Issues

15. Because we terminate as moot the investigation of the initial tariff revisions of Southwestern Bell, Pacific Bell, and Bell Atlantic, and find unlawful the tariff revisions of Ameritech, we do not reach the other issues designated for investigation regarding overhead loading factors,

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investment and unit cost figures); *In re Annual 1990 Access Tariff Filings*, Memorandum Opinion and Order, 5 FCC Rcd. 7487, 7487-88 (1990) (finding Centel rates unlawful for lack of adequate cost support because Centel did not adequately explain the costs that went into its cost model); *In re Southwestern Bell Telephone Company, Revisions to Tariff F.C.C. No. 68*, Memorandum Opinion and Order, 5 FCC Rcd. 5980, 5981 (1990) (Common Carrier Bureau) (finding unlawful a Southwestern Bell transmittal that failed to provide data to support its methodology); *In re Southwestern Bell Telephone Company, Revisions to Tariff F.C.C. No. 68*, Order, 5 FCC Rcd. 5971, 5972 (1990) (Common Carrier Bureau) (same).

<sup>47</sup> See *Ex parte* letter from James K. Smith, Director of Federal Relations, Ameritech, to Pat Donovan, Deputy Chief of the Competitive Pricing Division, Common Carrier Bureau, Federal Communications Commission (March 17, 1998) (on file with Magalie Roman Salas, Secretary, Federal Communications Commission).

<sup>48</sup> 47 U.S.C. §204(a)(1).

<sup>49</sup> *Id.*

<sup>50</sup> *In re Number Portability Query Services*, CC Docket No. 98-14, Order Designating Issues for Investigation, DA 98-182, at ¶ 15 (rel. Jan. 30, 1998).

demand forecasts, prearranged traffic estimates, blocking standards, and nonrecurring charges.<sup>51</sup>

#### IV. Ordering Clauses

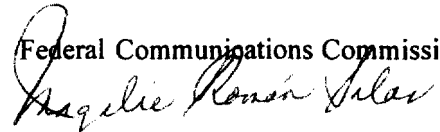
16. Accordingly, IT IS ORDERED that, pursuant to section 204(a)(2)(A) of the Communications Act, 47 U.S.C. § 204(a)(2)(A), the investigation of the tariff revisions described in Pacific Bell Transmittal No. 1962, Southwestern Bell Transmittal No. 2680, and Bell Atlantic Transmittal No. 1009 IS TERMINATED as moot.

17. IT IS FURTHER ORDERED that, pursuant to sections 4(i), 201(b), and 204 of the Communications Act, 47 U.S.C. §§ 154(i), 201(b), 202(a), 204, and 205, the tariff revisions described in Ameritech Transmittal Nos. 1123 and 1130 ARE UNLAWFUL.

18. IT IS FURTHER ORDERED that within five business days of release of this *Tariff Investigation and Termination Order* Ameritech SHALL FILE REVISIONS removing the long-term number portability query service tariff revisions described in Ameritech Transmittal Nos. 1123 and 1130. Ameritech should cite the "FCC" number of this order as the authority for this filing.

19. IT IS FURTHER ORDERED that, pursuant to section 204(a)(2)(A) of the Communications Act, 47 U.S.C. § 204(a)(2)(A), the investigation of the tariff revisions described in Ameritech Transmittal Nos. 1123 and 1130 IS TERMINATED.

Federal Communications Commission



Magalie Roman Salas  
Secretary

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<sup>51</sup> See *id.* at ¶¶ 9-10, 13-14.